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May 12, 2009

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2009-2 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, June 12, 2009**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2009-2

May 12, 2009

### 205.0000 BUSINESS INVENTORY EXEMPTION

[205.0245](#) **Research and Development Costs.** The business inventory exemption applies only to research and development costs that are related to a product that is held for sale or lease in the ordinary course of business. While such costs related to assessable tangible tools or machines are assessable, it does not necessarily follow that all other research and development costs are non-assessable simply because they are "consumed" as part of any research and development process intended to develop a product that eventually may or may not be held for sale. C 12/5/2008.

### 220.0000 CHANGE IN OWNERSHIP

[220.0092](#) **Corporate Reorganization.** For purposes of Revenue and Taxation Code section 64(b), "members of an affiliated group" means affiliation from the beginning of the transaction until the end of the transaction, and that affiliation cannot be just one step in the reorganization. As part of the reorganization, if subsidiaries are spun-off and no longer affiliated because they lack common parent corporate ownership, then the transaction was not a reorganization involving all members of an affiliated group because the subsidiaries were not affiliated *after* the spin-off; therefore, the requirements of section 64(b) are not met. Consequently, since the reorganization failed to meet the requirements for exemption under section 64(b) as a whole, each step in the transaction must be reviewed to determine whether a change in ownership occurred. C 11/26/2008.

[220.0813](#) **Trusts—Income Beneficiary.** If trust provisions require that the accumulated income be distributed to one beneficiary on a regular basis, that sole present income beneficiary of the trust corpus is considered the owner of the trust for property tax purposes. Even though the trust allows the income beneficiary to direct the trustee to pay any of the trust principal or accumulated income to certain other named beneficiaries, the income beneficiary is considered to be the sole owner of the trust property because he is the sole *guaranteed* present income beneficiary. C 11/21/2008.

### 493.0000 GRANDPARENT-GRANDCHILD TRANSFER

[493.0131](#) **Trusts.** Grandmother died and left various assets in trust to Grandmother's daughter (Parent), as trustee and income beneficiary for her lifetime. Parent, as trustee of the trust, used trust assets to purchase the subject real property, which was then held in the trust. Parent died in 2007 and was survived by two living children (grandchildren), and living children of her two predeceased children (great-grandchildren).

Generally, trustors are considered to be the transferors of real property that passes to beneficiaries, including remaindermen, under the terms of their trust instruments. In this case, Grandparent is the creator of the remainder interests pursuant to the terms of the trust. Parent, as life beneficiary, only has the right to enjoy the property during her lifetime, and never has the power to direct the disposition of the property either during her life or upon her death. Because Parent is not the transferor, the parent-child exclusion is not

available. While Grandmother could be considered an "eligible transferor" with respect to all of the *qualifying* property transferred to the remaindermen under the terms of her trust, this does not apply with respect to property acquired by the trust after her death. Property that was never owned by a transferor cannot ever be property of that transferor within the meaning of subdivision of section 63.1(a)(2).

Thus, later acquired property does not qualify for either the parent-child or grandparent-grandchild exclusion when the beneficial ownership vests in the trust's remainder beneficiaries. C 12/22/2008.

#### **880.0000(a) WELFARE EXEMPTION – IN GENERAL**

**880.0075 Date of Eligibility.** As used in Revenue and Taxation Code section 271, "acquired" connotes a single event, that of becoming the owner of property. Once property is acquired and the requirements of section 271 are or are not met, the property is owned property no longer subject to the provisions of section 271. Thereafter, on the following January 1 lien date and on subsequent lien dates, properties owned by the qualifying organization must be used for a qualifying purpose(s) and for a qualifying activity or activities on the respective lien dates. C 11/7/2008.

**880.0288 Trusts.** Typical trusts for welfare exemption purposes are trusts established for charitable purposes having as beneficiaries the community as a whole or an unascertainable portion thereof. Other trusts are trusts established for charitable purposes having as beneficiaries specific, named organizations which are charitable organizations. For property held in an irrevocable trust, the equitable owner is deemed to be the beneficiary. Thus, both the trust and the claimant have to meet requirements for the exemption. Therefore, the property may qualify for the welfare exemption if trust meets the organizational requirements for the exemption and the claimant meets all the requirements for the exemption. C 12/31/2007.